

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

**WILLIAM MERCADANTE,**

**Plaintiff,**

**v.**

**CAPITAL ONE BANK (USA), N.A.**

**Defendant.**

**Civil Action No.**

**Court of Common Pleas  
(Lackawanna County)  
2018-01462**

**NOTICE OF REMOVAL**

Defendant Capital One Bank (USA), N.A. (“Capital One” or “Defendant”), by its undersigned counsel, hereby removes the above-captioned action from the Court of Common Pleas of Lackawanna County, Pennsylvania, in which this case is now pending to the United States District Court for the Middle District of Pennsylvania. Removal is based on federal question jurisdiction, 28 U.S.C. §§ 1331, 1441, and 1446. As grounds for removal, Capital One states as follows:

**I. Background**

1. Plaintiff William Mercadante (“Plaintiff”), commenced this action by filing a Civil Complaint on or about March 1, 2018, in the Court of Common Pleas of Lackawanna County, Pennsylvania, at Case Number 2018-01462 (the “State Court Action”).

2. Capital One accepted service of the Complaint on or about March 5, 2018.

3. Pursuant to 28 U.S.C. § 1446(a), attached hereto as **Exhibit A** is a true and correct copy of all process, pleadings, and orders received by Defendant in the State Court Action. No other process, pleadings, or orders have been served upon Capital One in the State Court Action.

## **II. Notice of Removal is Timely Filed**

4. The removal of this action to this Court is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days after March 5, 2018, which is the date Capital One initially accepted service the Complaint in this action.

## **III. Federal Question Jurisdiction**

5. Plaintiff's complaint alleges a claim against Capital One for violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. 227, et seq. (Compl. ¶¶ 10-22).

6. Plaintiff's action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441(a).

## **IV. Procedural Requirements**

7. Pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), Capital One files this Notice of Removal in the United States District Court for the Middle District of

Pennsylvania, which is the federal district court embracing the state court where Plaintiff brought the original State Court Action, filed and pending in Lackawanna County, Pennsylvania.

8. In accordance with 28 U.S.C. § 1446(d), attached hereto as **Exhibit B** is a copy of the notice which will be promptly filed with the Prothonotary for the Court of Common Pleas, Lackawanna County, Pennsylvania, and served upon Plaintiff's counsel.

9. Capital One reserves the right to amend or supplement this Notice of Removal.

10. In filing this Notice of Removal, Capital One does not waive and specifically reserves any and all defenses, exceptions, rights, and motions. No statement or omission in this Notice shall be deemed an admission of any allegations or the damages sought in the Complaint. Further, Capital One disputes that the Plaintiff's claim has merit and denies that the Plaintiff is entitled to the relief requested in the Complaint.

WHEREFORE, Capital One respectfully requests that this civil action be removed from the Court of Common Pleas of Lackawanna County, Pennsylvania, to the United States District Court for the Middle District of Pennsylvania, and that this District Court enter such other and further orders as may be necessary to accomplish the requested removal.

Respectfully submitted,

Date: April 4, 2018

By: /s/ Stephanie J. Peel  
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*Attorney for Defendant*  
*Capital One Bank (USA), N.A.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 4, 2018, a true and correct copy of the foregoing Notice of Removal was served via U.S. First Class mail, postage prepaid, upon the following:

Brett Freeman, Esq.  
Sabatini Freeman, LLC  
216 N. Blakely St.  
Dunmore, PA 18512  
*Attorney for Plaintiff*

/s/ Stephanie J. Peel  
Stephanie J. Peel